

ORDINANCE NO. G-2014-5

A SPECIAL ORDINANCE authorizing the City of Evansville to issue up to \$7,500,000 aggregate principal amount of its City of Evansville, Indiana Multifamily Housing Revenue Bonds, Series 2014 (Eastland Apartments Project) (the "Bonds") in one or more series and approving and authorizing other actions in respect thereto.

WHEREAS, Indiana Code Title 36, Article 7, Chapter 12 (the "Act") declares that the financing and refinancing of economic development facilities constitutes a public purpose; and

WHEREAS, the Act provides that an issuer may, pursuant to the Act, issue revenue bonds and lend the proceeds thereof to a developer for the purpose of financing, reimbursing or refinancing the costs of economic development facilities, for diversification of economic development and creation or retention of opportunities for gainful employment; and

WHEREAS, the Act provides that such bonds may be secured by a trust indenture between an issuer and a corporate trustee; and

WHEREAS, a representative of SA Evansville, LLC, an Indiana limited liability company (the "Company") has requested that the City of Evansville, Indiana (the "Issuer") issue bonds and lend the proceeds thereof to the Company in order to enable the Company to undertake and complete the acquisition, renovation and equipping of a multifamily housing facility currently known as East Eden Apartments consisting of 161 apartment units, together with functionally related and subordinate facilities such as recreational facilities and parking areas, located at 5308 Eden East, in Evansville, Indiana (the "Project"); and

WHEREAS, the Evansville Economic Development Commission (the "Commission") has rendered a report concerning the proposed financing of economic development facilities for the Company and the Evansville-Vanderburgh County Area Planning Commission has been given the opportunity to comment thereon; and

WHEREAS, the Commission after a public hearing held on May 12, 2014, pursuant to Section 24 of the Act and Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code") found that the financing of the Project complies with the purposes and provisions of the Act, that such financing will be of benefit to the health and welfare of the Issuer and its citizens through the requirement that the Project serve persons and families of low and moderate income, that the amount of tax credits to be allocated to the Project under Section 42 of the Code does not exceed the amount necessary for the financial feasibility of the project and its viability as a qualified housing project throughout the credit period for the Project and that the Project satisfies the requirements for the allocation of a housing credit dollar amount under the Indiana Housing and Community Development Authority's (the "IHCD") qualified allocation plan; and

WHEREAS, the financing will not have an adverse competitive effect or impact on any similar facility or facilities of Evansville, Indiana; and

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Anna Winkler
CITY CLERK

WHEREAS, pursuant to and in accordance with the Act, the Issuer desires to provide funds to finance the Project by issuing not to exceed \$7,500,000 aggregate principal amount of the Bonds; and

WHEREAS, the Issuer intends to issue the Bonds in one or more series pursuant to a Trust Indenture (the "Indenture"), by and between the Issuer and The Huntington National Bank, as trustee (the "Trustee"), in order to obtain funds to lend to the Company for the purpose of the acquisition, renovation and equipping of the Project pursuant to a Loan Agreement with respect to the Bonds between the Issuer and the Company (the "Loan Agreement"), provided, however, that the aggregate principal amount of the Bonds shall not exceed \$7,500,000; and

WHEREAS, the Loan Agreement provides for the repayment by the Company of the loan of the proceeds of the Bonds pursuant to which the Company will agree to make payments sufficient to pay the principal and interest on the Bonds as the same become due and payable and to pay administrative expenses in connection with the Bonds; and

WHEREAS, no member of this Common Council (the "Council") has any pecuniary interest in any employment, financing agreement or other contract made under the provisions of the Act and related to the Bonds authorized herein, which pecuniary interest has not been fully disclosed to the Council and no such member has voted on any such matter, all in accordance with the provisions of Section 6 of the Act; and

WHEREAS, there has previously been submitted to the Commission for its approval substantially final forms of the Indenture, Loan Agreement, Bond Purchase Agreement among The Sturges Company (the "Purchaser"), the Issuer and the Company, Regulatory Agreement and Declaration of Restrictive Covenants among the Issuer, the Trustee and the Company, Continuing Disclosure Agreement between the Company and the Trustee, Preliminary Official Statement, the forms of the Bonds, the Trust Account Agreement among the Issuer, the Trustee and the Company (hereinafter referred to collectively as the "Financing Documents") and this proposed form of ordinance which were incorporated by reference in the Commission's Resolution adopted earlier in time on the date of adoption of this Ordinance, which Resolution has been transmitted hereto; and

WHEREAS, the Company will be liable for the debt described in the Loan Agreement; and

WHEREAS, based upon the resolution adopted by the Commission pertaining to the Project, the Issuer hereby finds and determines that the funding approved by the Commission for the Project will be of benefit to the health and general welfare of the citizens of the Issuer, complies with the provisions of the Act and the amount necessary to finance the costs of the Project, will require the issuance, sale and delivery of one or more series of economic development revenue bonds in an aggregate combined principal amount not to exceed \$7,500,000; now, therefore:

**BE IT ORDAINED BY THE COMMON COUNCIL
OF THE CITY OF EVANSVILLE, INDIANA:**

SECTION 1. It is hereby found that the financing of the economic development facilities referred to in the Financing Documents consisting of the Project, the issuance and sale of the Bonds, the loan of the net proceeds thereof to the Company for the purposes of the acquisition, renovation and equipping of the Project, and the repayment of said loan by the Company will be of benefit to the health or general welfare of the Issuer and its citizens and does comply with the purposes and provisions of the Act, including in particular, the requirement of promoting a substantial likelihood of creating or retaining opportunities for gainful employment. Furthermore, it is hereby found that the Project will further a public purpose of the Issuer through, among other things, the provision of quality, affordable, multifamily housing.

SECTION 2. The forms of the Financing Documents presented herewith are hereby approved and all such documents shall be kept on file by the Clerk of the Council (the "City Clerk") or City Controller. In compliance with Indiana Code Title 36, Article 1, Chapter 5, Section 4, two (2) copies of the Financing Documents are on file in the office of the City Clerk for public inspection.

SECTION 3. The Issuer shall issue its Bonds in one or more series, as described above, in the aggregate principal amount not to exceed \$7,500,000, for the purpose of procuring funds to loan to the Company in order to finance the acquisition, renovation and equipping of the Project which Bonds will be payable as to principal and interest solely from the payments made by the Company pursuant to the Financing Documents to evidence and secure said loan and as otherwise provided in the above-described Financing Documents. The Bonds shall never constitute a general obligation of, an indebtedness of, or charge against the general credit of the Issuer.

SECTION 4. The City Clerk and City Controller are authorized and directed to sell such Bonds to the purchasers thereof at a price not less than 97% of the aggregate principal amount thereof plus accrued interest, if any, and at a rate of interest not to exceed 10% percent per annum. The Bonds will mature no later than 40 years from the date of their issuance, and shall be subject to optional redemption within 2 years of the date of issuance thereof at a price of 100% of the principal amount thereof.

SECTION 5. The Mayor and City Clerk are authorized and directed to execute those Financing Documents approved herein which require the signature of the Mayor and City Clerk and any other document which may be necessary or desirable to consummate the transaction, and their execution is hereby confirmed on behalf of the Issuer. The signatures of the Mayor and the City Clerk on the Bonds may be necessary or desirable to consummate the transaction, and their execution is hereby confirmed on behalf of the Issuer. The signatures of the Mayor and the City Clerk on the Bonds may be facsimile signatures. The City Clerk and City Controller are authorized to arrange for the delivery of such Bonds to the purchaser, payment for which will be made in the manner set forth in the Financing Documents. The Mayor and City Clerk may, by their execution of the Financing Documents requiring their signatures and imprinting of their facsimile signatures thereon, approve changes therein and also in those Financing Documents

which do not require the signature of the Mayor and/or City Clerk without further approval of this Council or the Commission if such changes do not affect terms set forth in Section 27(a)(1) through (a)(10) of the Act.

SECTION 6. The provisions of this ordinance and the Financing Documents shall constitute a contract binding between the Issuer and the holder or holders of the Bonds and after the issuance of said Bonds, this ordinance shall not be repealed or amended in any respect which would adversely affect the right of such holder or holders so long as said Bonds or the interest thereon remains unpaid.

SECTION 7. Rule 15c2-12(b)(1) of the Securities Exchange Act of 1934, as amended (the "SEC Rule"), provides that, prior to the time a participating underwriter or placement agent bids for, purchases, offers or sells municipal securities, the participating underwriter or placement agent shall obtain and review an official statement that an issuer of such securities deems a "near final" official statement. The Preliminary Official Statement is hereby deemed final as of its date, except for the omission of no more than the following information: the offering price(s), interest rate(s), selling compensation, aggregate principal amount, principal amount per maturity, delivery dates, ratings and other terms of the securities depending on such matters. The Mayor, the City Clerk or any other officer of the Issuer familiar with the matters with respect to the Issuer set forth in the Preliminary Official Statement is hereby authorized to certify to the underwriter, that the information in the Preliminary Official Statement with respect to the Issuer is deemed to be final within the meaning of the SEC Rule prior to the distribution of the Preliminary Official Statement.

SECTION 8. Subject to the obligations of the Company set forth in the Loan Agreement, the Regulatory Agreement and Declaration of Restrictive Covenants and the Tax Representation Certificate, the Issuer will use its best efforts to restrict the use of the proceeds of the Bonds in such a manner and to expectations at the time the Bonds are delivered to the purchasers thereof, so that they will not constitute arbitrage bonds under Section 148 of the Code and the regulations promulgated thereunder. The Mayor and the City Clerk, or any other officer having responsibility with respect to the issuance of the Bonds, are authorized and directed, alone or in conjunction with any of the foregoing, or with any other officer, employee, consultant or agent of the Issuer, to deliver a certificate for inclusion in the transcript of proceedings for the Bonds, setting forth the facts, estimates and circumstances and reasonable expectations pertaining to said Section 148 of the Code and the regulations thereunder.

SECTION 9. No recourse under or upon any obligation, covenant, acceptance or agreement contained in this ordinance, the Financing Documents or under any judgment obtained against the Issuer or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise, or under any circumstances, under or independent of the Loan Agreement, shall be had against any member, director, or officer or attorney, as such, past, present, or future, of the Issuer, either directly or through the Issuer, or otherwise, for the payment for or to the Issuer or any receiver thereof or for or to any holder of the Bonds secured thereby, or otherwise, of any sum that may remain due and unpaid by the Issuer upon any of such Bonds. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such member,

director, or officer or attorney, as such, to respond by reason of any act or omission on his or her part or otherwise for, directly or indirectly, the payment for or to the Issuer or any receiver thereof, or for or to any owner or holder of the Bonds, or otherwise, of any sum that may remain due and unpaid upon the Bonds hereby secured or any of them, shall be expressly waived and released as a condition of and consideration for the execution and delivery of the Loan Agreement and the issuance, sale and delivery of the Bonds.

SECTION 10. The Company will indemnify and hold the Issuer, including its officials, attorneys, employees and agents, free and harmless from any loss, claim, damage, tax, penalty, liability, disbursement, litigation expenses, attorneys' fees and expenses and other court costs arising out of, or in any way relating to, the execution or performance of the Financing Documents or other documents in connection therewith or any other cause whatsoever pertaining to the Project or the Bonds, including the issuance and sale of the Bonds or failure to issue or sell the Bonds or other actions taken under the Financing Documents or other documents in connection therewith or any other cause whatsoever pertaining to the Project or the Bonds, all as further described in the Loan Agreement, except in any case as a result of the intentional misrepresentation or willful misconduct of the Issuer.

SECTION 11. It is hereby determined that the amount of tax credits to be allocated to the Project under Section 42 of the Code does not exceed the amount necessary for the financial feasibility of the Project and its viability as a qualified housing project throughout the credit period for the Project. In making the foregoing determination, the Council has relied upon representations of the Company. The foregoing determinations shall not be construed to be a representation or warranty by the Issuer as to the feasibility or viability of the Project. The Council hereby authorizes and directs the City Controller to review and make the foregoing determination again for and on behalf of the Issuer at the request of the Company, following receipt of supporting materials submitted by the Company to the IHCD and either written representations of the Company or of IHCD to the effect that (i) the amount of tax credits to be allocated to the Project under Section 42 of the Code does not exceed the amount necessary for the financial feasibility of the Project and its viability as a qualified housing project throughout the credit period for the Project and (ii) the Project satisfies the requirements for the allocation of a housing credit dollar amount under IHCD's qualified allocation plan. Such determinations shall occur on or about the date of the sale of the Bonds to the Purchasers thereof and on or about the date that each building of the Project is placed in service. In reliance upon the representations of the Company, it is hereby found and determined that the Project satisfies the requirements for the allocation of a housing credit dollar amount under IHCD's qualified allocation plan.

SECTION 12. If any section, paragraph or provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Ordinance.

SECTION 13. All ordinances, resolutions and orders or parts thereof, in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

SECTION 14. It is hereby determined that all formal actions of the Council relating to the adoption of this Ordinance were taken in one or more open meetings of the Council, that all deliberations of the Council and of its committees, if any, which resulted in formal action, were in meetings open to the public, and that all such meetings were convened, held and conducted in compliance with applicable legal requirements, including Indiana Code 5-14-1.5 et seq., as amended.

SECTION 15. The Mayor and the City Clerk are authorized to take all such further actions or to execute, attest and deliver such further instruments and documents in the name of the Issuer as in their judgment shall be necessary or advisable in order fully to consummate the transaction and carry out the purposes of this Ordinance.

SECTION 16. This Ordinance shall be in full force and effect immediately upon adoption by this Council and signing by the Mayor.

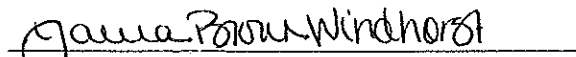
PASSED BY the Common Council of the City of Evansville, Indiana, on the 12 day of May, 2014, on said day signed by the President of the Common Council and attested by the City Clerk.



President of the Common Council,
City of Evansville, Indiana

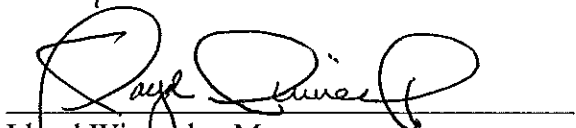
ATTEST: Laura Brown Windhorst

Presented by me, the undersigned City Clerk of the City of Evansville, Indiana, to the Mayor of said City, this 13 day of May, 2014, at 3 o'clock P.m. for his consideration and action thereon.



Laura Brown Windhorst, City Clerk
City of Evansville, Indiana

Having examined the foregoing ordinance, I do now, as Mayor of the City of Evansville, Indiana, approve said ordinance and return the same to the City Clerk this 13th day of May, 2014, at 4:30 o'clock P.m.



Lloyd Winnecke, Mayor
City of Evansville, Indiana

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